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Supreme Court of the United States

OCTOBER TERM, 1948.

No. 214.

R. B. GANTT,

Petitioner,

against

FELIPE Y CARLOS HURTADO & CIA., LTDA.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Counsel for petitioner, R. B. Gantt, has set forth in his brief in support of the petition for a writ of certiorari substantially the same arguments and reasoning which have been presented successively to Mr. Justice Church, of the Supreme Court of New York, to the Appellate Division of the First Department of the Supreme Court of New York and, finally, to the Court of Appeals.

The opinions rendered by Mr. Justice Church, sitting as the Court of first instance, and by Judge Desmond, of the Court of Appeals (published in full at pp. 21-31 of the Transcript of Record), deal fully and comprehensively with the questions sought to be raised again before this Court by the petitioner, and reject petitioner's contentions.

The Appellate Division, in unanimously sustaining the decision of Mr. Justice Church, rendered no independent opinion. It may therefore be correctly stated that the opinion rendered by Mr. Justice Church would stand as the approved expression of the law of the State of New York

on the subject at hand, had no appeal been taken to the Court of Appeals.

The opinion of Judge Desmond of the Court of Appeals, which received the unanimous support of that Court, is in a sense complementary to the opinion expressed by Mr. Justice Church. Both opinions taken together express the considered position of the courts of the State of New York to the effect:

1. That under the New York Arbitration Law an agreement voluntarily entered into by parties residing outside of that State to submit controversies arising *in futuro* to an Arbitration Tribunal in New York will be enforced; and

2. That the non-enforceability in the State where executed of a clause contained in a commercial contract requiring arbitration of disputes arising *in futuro* is no bar to the enforcement of such provision in New York when the parties to the agreement have voluntarily and affirmatively selected that state and an Arbitration Tribunal there located as the forum.

With respect to the petition for a writ of certiorari we are content to rely for our argument in opposition on the opinions of Mr. Justice Church and Judge Desmond referred to above.

Conclusion.

It is respectfully submitted that the petition for a writ of certiorari be dismissed.

FRANK RASHAP,
Counsel for Respondent.

WALTER M. HINKLE,
Of Counsel.